

Federal Communications Commission

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FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 27 3 13 PM '93

DISPATCHED BY MM Docket No. 92-176

In the Matter of

Amendment of Section 73.202(b), RM-8038
Table of Allotments, RM-8116
FM Broadcast Stations.
(Bentonville, Mountain Home and
Yellville, Arkansas)¹

REPORT AND ORDER (Proceeding Terminated)

Adopted: July 9, 1993;

Released: July 27, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making and Order to Show Cause*, 7 FCC Rcd 5443 (1992), issued in response to a petition for rule making filed by Demaree Media, Inc. ("DMI"), licensee of Station KOLZ(FM), Bentonville, Arkansas, proposing the substitution of Channel 252C2 for Channel 252C3,² and modification of its license accordingly. To accommodate its proposal, DMI also requested the substitution of Channel 232A for Channel 252A at Mountain Home, Arkansas, and

modification of the license of Mountain Home Broadcasting Corporation ("MHBC") for Station KTLO-FM. DMI filed supporting comments in response to the Notice.³ In response to the *Order to Show Cause*, comments and a counterproposal were filed jointly by MHBC, A&J Broadcasting Company ("A&J"),⁴ and Twin Cities Broadcasting, Inc. ("Twin Cities").⁵ DMI filed reply comments. MHBC, A&J and Twin Cities submitted late-filed reply comments, to which DMI responded.⁷ Additional comments were filed by DMI and MHBC.⁸

2. In support of its proposal DMI states that Bentonville's population has increased significantly during the past decade. Further, DMI states that other than its Station KOLZ(FM), Bentonville is served locally by daytime only Station KJEM(AM).⁹ Thus, DMI urges that adoption of its proposal would enable it to provide Bentonville with an expanded coverage area FM service.¹⁰

3. In response to the *Order to Show Cause*, MHBC submitted a joint counterproposal setting forth several options to accomplish a channel upgrade for its Station KTLO-FM, Channel 252A, to specify operation on Channel 250C2 at Mountain Home, by utilizing a restricted site located 22 kilometers (13.7 miles) southeast of the community. MHBC contends that the restricted site will enable Station KTLO-FM to be upgraded while remaining fully spaced to the proposed operation of Station KOLZ(FM) on Channel 252C2 at Bentonville.¹¹ Additionally, in order to accommodate its proposal, MHBC requests the substitution of Channel 269A for Channel 249C2 at Yellville, Arkansas, and modification of the license of A&J for Station KCTT-FM accordingly. MHBC states that Channel 269A can be allotted to Yellville at the licensed site of Station KCTT-FM,¹² and provided an agreement with A&J consenting to the modification of its facilities.^{13 14}

¹ The community of Yellville, Arkansas, has been added to the caption.

² Petitioner is presently licensed on Channel 252A. However, it was modified to specify operation on Channel 252C3 in MM Docket No. 91-124. See 6 FCC Rcd 6498 (1991). Petitioner has filed an application for a construction permit to operate on Channel 252C3 at Bentonville. See File No. BPH-9205181A.

³ As stated in the *Notice*, although petitioner's request was signed and its address given, it did not verify the statements contained in the petition as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the noted deficiency in its responsive comments, and has complied accordingly.

⁴ A&J is the licensee of Station KCTT-FM, Yellville, Arkansas.

⁵ Twin Cities is the licensee of Station KOZX(FM), Cabool, Missouri.

⁶ Public Notice of the counterproposal was given on November 6, 1992, Report No. 1916 (RM-8116).

⁷ MHBC states that these comments, which were accompanied by a motion to accept, are intended to clarify a misunderstanding between MHBC and petitioner regarding the intent of MHBC's jointly filed comments and counterproposal in this proceeding. The Commission's Rules do not contemplate the filing of pleadings beyond the comment periods set forth in the *Notice*. Moreover, in light of our determination regarding MHBC's counterproposal, as discussed *infra*, we find that the additional comments do not provide information of decisional significance, and therefore they will not be considered.

⁸ The joint comments seek approval of the channel allotments requested herein on an expedited basis. In light of our action herein, this pleading is moot.

⁹ However, Channel 239A has been proposed as a second local FM service to Bentonville. See *Notice of Proposed Rule Making*, 8 FCC Rcd 1372 (1993), in MM Docket No. 93-27.

¹⁰ DMI also advises that if its proposal is adopted, it will create an overlap of the 70 dBu contour of its commonly-owned Station KKEG(FM) at Fayetteville, Arkansas. However, DMI states that it will comply with the multiple ownership requirements of the Commission's Rules at the application level. See 47 C.F.R. § 73.3555.

¹¹ The distance between proposed Channel 252C2 at Bentonville and the licensed site for Station KTLO-FM, Channel 252A, Mountain Home, Arkansas, at coordinates 36-20-55 and 92-23-59 is 145 kilometers (90 miles) whereas a distance of 166 kilometers (103 miles) is required between Class A and C2 co-channels. However, the distance between MHBC's counterproposal to modify Station KTLO-FM to Channel 250C2 and to relocate its transmitter at coordinates 36-10-00 and 92-15-00 is 157.5 kilometers (104 miles) whereas a distance of only 58 kilometers (36 miles) is required in this instance. While there is no technical conflict between MHBC's upgrade request at Mountain Home and the petitioner's proposal at Bentonville, the two are interrelated since Channel 252A at Mountain Home must be deleted to accommodate each upgrade request.

¹² Coordinates at the licensed site of Station KCTT-FM are 36-15-39 and 92-41-41.

¹³ In further support of the Yellville modification, petitioner advises that Station KCTT-FM was modified to specify operation on Channel 249C2 at a restricted site located 28.3 kilometers west of the community, in the context of MM Docket No. 87-565. See 3 FCC Rcd 5813 (1988). However, it states, the former licensee did not pursue the modification before

4. In its reply comments, DMI interposes no objection to the requested realignment of channels contained in MHBC's counterproposal since the requested changes sought by MHBC would not have an impact on its proposal.¹⁵

5. In view of the above, we believe the public interest would be served by substituting Channel 252C2 for Channel 252C3 at Bentonville and substituting Channel 250C2 for Channel 252A at Mountain Home since it would enable both communities to receive an expanded coverage FM service. Additionally, since A&J has agreed to the downgrade in the facilities of Station KCTT-FM, we will substitute Channel 269A for Channel 249C2 at Yellville, to accommodate MHBC's proposal. As stated in the *Notice*, Channel 252C2 can be allotted to Bentonville at DMI's suggested site, located 28 kilometers (17.4 miles) southeast of the community.¹⁶ Channel 250C2 can be allotted to Mountain Home at MHBC's suggested site, located 22.3 kilometers (13.8 miles) southeast of the community.¹⁷ Channel 269A can be allotted to Yellville at the licensed site of Station KCTT-FM.¹⁸

6. In accordance with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the license of Demaree Media, Inc. for Station KOLZ(FM) to specify operation on Channel 252C2 at Bentonville, and the license of Mountain Home Broadcasting Corporation for Station KTLO-FM to specify operation on Channel 250C2 in lieu of Channel 252A at Mountain Home, Arkansas. Additionally, we are modifying the license of A&J Broadcasting Company for Station KCTT-FM, Yellville, Arkansas, to specify operation on Channel 269A.

7. Pursuant to DMI's representation regarding its commonly-owned Station KKEG(FM) at Fayetteville, Arkansas, it is expected to submit an application specifying facilities for Station KOLZ(FM) that will comply with the multiple ownership requirements of § 73.3555 of the Commission's Rules.

8. Although DMI and MHBC may both be accommodated in the context of this proceeding, DMI recognizes that MHBC must change the frequency for Station KTLO-FM to accommodate its upgrade request. The *Notice* proposed to substitute nonadjacent Channel 232A for Channel 252A at Mountain Home and modify the license for Sta-

tion KTLO-FM accordingly. MHBC has requested the modification of its frequency to Channel 250C2 instead of the substitution of Channel 232A which would not allow an upgrade for Station KTLO-FM. As DMI benefits from the change in frequency at Mountain Home, and has stated its willingness to reimburse MHBC, we shall order DMI to reimburse MHBC for the reasonable costs in changing its frequency equivalent to the costs of changing to a Class A channel. *See Mitchell, South Dakota*, 30 RR 2d 1688 (1976); *see also Lonoke, Arkansas and Clarksdale, Mississippi*, 6 FCC Rcd 4861 (1991).

9. Additionally, MHBC is required to reimburse A&J for the reasonable costs associated with the modification of the facilities for Station KCTT-FM, Yellville, Arkansas. *See Circleville and Columbus, Ohio*, 8 FCC 2d 159 (1967). MHBC has stated its willingness to reimburse A&J.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **September 10, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Bentonville, Arkansas	252C2
Mountain Home, Arkansas	250C2, 288C2, 298C1
Yellville, Arkansas	269A

11. IT IS FURTHER ORDERED. That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the licenses of Demaree Media, Inc. for Station KOLZ(FM), Bentonville, Arkansas, Mountain Home Broadcasting Corporation for Station KTLO-FM, Mountain Home, Arkansas, and A&J Broadcasting Company for Station KCTT-FM, Yellville, Arkansas, ARE MODIFIED to specify operation on Channel 252C2, Channel 250C2 and Channel 269A, respectively, subject to the following conditions:

assigning Station KCTT-FM to A&J. Although A&J has received a construction permit for Channel 249C2, MHBC advises that it has reached an agreement with A&J whereby it will compensate that licensee to accept the modification of the facilities for Station KCTT-FM to specify operation on Channel 269A at Yellville. Moreover, MHBC asserts that since Channel 269A can be allotted at the licensed site of Station KCTT-FM, A&J believes it could operate Station KCTT-FM more economically as a Class A facility, and that a lower-powered channel would be adequate to serve that small community (population 1,181, according to the 1990 U.S. Census).

¹⁴ Additionally, MHBC alternately requests the substitution of Channel 271A for Channel 251A at Cabool, Missouri, and modification of the license of Twin Cities for Station KOZX(FM), to which Twin Cities has agreed. MHBC states that while the Cabool substitution is not required to accommodate its upgrade request, provided it relocates Station KTLO-FM to a site 22 kilometers (13.6 miles) southeast of the community, it would alternately enable MHBC to employ a directional antenna near its presently licensed site. Therefore, MHBC urges that in the event the petition for reconsideration in MM Docket No. 89-120 is denied or dismissed before this proceeding is resolved, that Channel 250C2 be allotted to Mountain Home at a site at

coordinates 36-20-25 and 92-23-59, which it states is near the present KTLO-FM antenna site. However, as our policy is to decline the acceptance of proposals to change the Table of Allotments that are dependent upon final action in another proceeding, we cannot consider the Cabool substitution at this time. *See Oxford and New Albany, Mississippi*, 3 FCC Rcd 615 (1988). As a result of our determination, responsive comments related to the Cabool, Missouri, substitution will not be considered.

¹⁵ While interposing no objection to an upgrade for Station KTLO-FM, DMI nevertheless believes MHBC's counterproposal is not acceptable for consideration to the extent it is dependent upon the outcome of MM Docket No. 89-120, citing *Amendment of §1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911 (1990). However, DMI's objection is moot in light of our determination discussed in footnote 14 above.

¹⁶ Coordinates used for Channel 252C2 at Bentonville are 36-11-00 and 94-00-00.

¹⁷ Coordinates used for Channel 250C2 at Mountain Home are 36-10-00 and 92-15-00.

¹⁸ Coordinates used for Channel 269A at Yellville are 36-15-39 and 92-41-41.

(a) Within 90 days of the effective date of this *Order*, the licensees shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Demaree Media, Inc., licensee of Station KOLZ(FM), Bentonville, Arkansas, and Mountain Home Broadcasting Corporation, licensee of Station KTLO-FM, Mountain Home, Arkansas, are required to submit a rule making fee in addition to the fee required for the applications to effectuate their upgrades.

13. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the licensees of Station KTLO-FM, Station KCTT-FM and Station KOZX(FM), as follows:

Mountain Home Broadcasting Corporation
Radio Station KTLO-FM
P.O. Box C
Mountain Home, Arkansas 72653

A&J Broadcasting Company
Radio Station KCTT-FM
P.O. Box 100
Yellville, Arkansas 72687

Twin Cities Broadcasting, Inc.
Radio Station KOZX(FM)
P.O. Box 514
Cabool, Missouri 65689

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.